

(i) If an agency protest is received before contract award, the contracting officer may only make award if the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, or within five (5) days of the offer of a debriefing required by FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend performance of the contract unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written, dependent upon advice of legal counsel.

(k) The deciding official must send a confirming letter within three (3) days after the decision using a means that provides evidence of receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(3) If the deciding official sustains the protest, relief may consist of any of the following:

(i) Recommendation that the contract be terminated for convenience or cause, or that the solicitation be canceled.

(ii) Recompeting the requirement from the beginning of the solicitation or from the last round of negotiations.

(iii) Amending the solicitation.

(iv) Refraining from exercising contract options.

(v) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(vi) Other action that the deciding official determines is appropriate.

(l) If the deciding official sustains a protest, then within 30 days after receiving the official's recommendations for relief, the contracting officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the deciding official, if the contracting officer was not the deciding official, in writing, if any recommendations have not been implemented and explain why.

(m) If the protest is denied, and contract performance has been suspended under paragraph (i) of this section, the contracting officer will not lift such suspension until five (5) days after the protest decision has been issued, to allow the protester to file a protest with the General Accounting Office, unless the HCA makes a new finding under FAR 33.103(f)(3). The contracting officer shall consider allowing such suspension to remain in effect pending the resolution of any GAO proceeding.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Labor.

#### 2933.104 Protests to GAO.

(a) *General procedures.* The HCA has the responsibility to prepare and provide to the General Accounting Office (GAO) the agency report with the information required by FAR 33.104(a). The agency report must be coordinated with the Office of the Solicitor before the report is signed and sent to the GAO.

(b) *Protests before award.* The authority of the HCA under FAR 33.104(b) to authorize a contract award when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(b)(1). The written finding must be coordinated with Office of the Solicitor before the HCA affirms its approval by signing the written finding and sending it to the GAO. Copies of the signed written finding and the signed written notice to the GAO must be provided to the Senior Procurement Executive within two (2) working days after they are sent to the GAO.

(c) *Protests after award.* The authority of the HCA under FAR 33.104(c) to authorize contract performance when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the

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responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(c)(2). The written finding must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO.

(d) *Notice to the GAO.* The authority of the HCA under FAR 33.104(g), to report to the GAO the failure to fully implement the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, is non-delegable. The written notice must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO. A copy of all notices to the GAO submitted in accordance with FAR 33.104(g) must be provided to the Senior Procurement Executive within (two) working days after they are sent to the GAO.

### Subpart 2933.2—Disputes and Appeals

#### 2933.203 Applicability.

The authority of the Agency Head to determine that the application of the Contract Disputes Act of 1978 to any contract with a foreign government or agency of that government, or an international organization or a subsidiary body of that organization, would not be in the public interest is delegated to the HCA.

#### 2933.209 Suspected fraudulent claims.

The contracting officer must refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

#### 2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) must include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 800 K Street, NW, Suite 400 North, Washington, DC 20001-8002.

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#### 2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer must endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed). The contracting officer must also notify the Solicitor of Labor of the appeal.

(b) The contracting officer should prepare and transmit the administrative file for the Office of the Solicitor and assist with the appeal.

#### 2933.213 Obligation to continue performance.

The contracting officer must include the clause at FAR 52.233-1, Disputes (Alternate I), in contracts where continued performance is necessary pending resolution of any claim arising under or relating to the contract.

#### 2933.270 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract, or relating to a contract, made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The LBCA rules of procedure are contained in 41 CFR part 29-60.104, appearing in the July 1, 1983, edition of 41 CFR, subtitle A, chapters 19-100.

## PARTS 2934-2935 [RESERVED]

## PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.

2936.201 Evaluation of contractor performance.

2936.209 Construction contracts with architect-engineer firms.

#### Subpart 2936.5—Contract Clauses

2936.516 Quality surveys.